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INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of December 1, 1975

between

UNION TANK CAR COMPANY

and

THE TRAVELERS INSURANCE COMPANY

LEASE OF RAILROAD EQUIPMENT dated as of December 1, 1975, between UNION TANK CAR COMPANY, a Delaware corporation (hereinafter called the Lessee), and THE TRAVELERS INSURANCE COMPANY (hereinafter called the Lessor).

WHEREAS the Lessor is entering into a conditional sale agreement dated as of the date hereof with Paccar Inc, (such corporation being hereinafter called the Builder and such agreement being hereinafter called the Security Documentation), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (hereinafter called the Equipment);

WHEREAS the Builder is assigning its interest in the Security Documentation to First Security Bank of Utah, N.A., as agent under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement) with the Lessor, the Lessee, and The Travelers Indemnity Company (hereinafter called the Investor) (said bank, as so acting, being hereinafter, together with its successors and assigns, called the Vendor); and

WHEREAS the Lessee desires to lease such number of units of the Equipment as are delivered and accepted and settled for under the Security Documentation (hereinafter called the Units) at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor, the Builder or the Vendor; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect

in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Security Documentation. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Security Documentation. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the provisions of Article 3 of the Security Documentation, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the Security

Documentation pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, 37 consecutive semiannual payments payable on January 15 and July 15 in each year, commencing July 15, 1976. The rental payment payable on July 15, 1976, shall be in an amount equal to .026389% of the Purchase Price (as defined in the Security Documentation) of each Unit subject to this Lease for each day elapsed from the Closing Date (as defined in the Security Documentation) for such Unit to and including the date of such payment. The next 36 rental payments shall each be in an amount equal to 4.555% of the Purchase Price of each Unit then subject to this Lease. In addition, as additional rental hereunder, the Lessee agrees to pay to the Lessor on the Cut-Off Date (as defined in the Participation Agreement) and on July 15, 1976, respectively, amounts equal to the amounts required to be paid by the Lessor pursuant to the last paragraph of Paragraph 7 of the Participation Agreement.

In the event that there are any losses, liabilities or expenses arising out of or resulting from the Investments made pursuant to Paragraph 2 of the Participation Agreement, including, but not limited to, any deficiency in respect thereof, rentals thereafter payable by the Lessee in respect of Units settled for after such loss, liabilities, expenses or deficiencies arose shall be increased by such amount as shall, in the reasonable opinion of the Lessor, cause the Lessor's net return (computed on the same assumptions as were utilized by the Lessor in originally evaluating this transaction) to equal the net return that would have been realized by the Lessor if such loss, liability or expense had not occurred.

The rental payments hereinbefore set forth are subject to adjustment pursuant to § 16 hereof. If any of the rental payment dates referred to above is not a business day the rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York; Salt Lake City, Utah; or Chicago, Illinois, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make, and the Lessee agrees to make, all the payments provided for in this Lease for the account of the Lessor in immediately available Salt Lake City or Federal funds in care of the Vendor, at 79 South Main Street, Salt Lake City, Utah 84111, attention of Trust Department, Corporate Division, on or before 11:00 a.m., Salt Lake City time, on the date upon which such payments are due and payable. Such payments shall be accompanied by instructions to the Vendor, first, to apply such payments to satisfy the obligations of the Lessor under the Security Documentation, subject to the limitations contained in the last paragraph of Article 4 of the Security Documentation, and, second, so long as no event of default or event which with the lapse of time and/ or demand provided for in the Security Documentation could constitute an event of default under the Security Documentation shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in immediately available funds in the city where such payment is to be made.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the Security Documentation. If an event of default should occur under the Security Documentation, the Vendor may terminate this Lease (or rescind its termination), all as provided therein.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the road number set forth in Schedule A hereto, or in the case of any Unit not there listed such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement Recorded under the Interstate Commerce Act, Section 20c", with appropriate changes

thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and property in such Unit, the rights of the Lessor under this Lease and the rights of the Vendor under the Security Documentation. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words that may be removed, defaced or destroyed. In the event of a change in the road number of any Unit, the Lessee will promptly (i) file a statement containing the new number or numbers being substituted with the Vendor and the Lessor and file, record and deposit such statement in all public offices where this Lease and the Security Documentation shall have been filed, recorded and deposited and (ii) furnish the Vendor and the Lessor an opinion of counsel to that effect and to the further effect that no further filing, recording or deposit (or giving of notice) with any other Federal, state or local government or agency thereof is necessary in order to protect the interests of the Vendor or the Lessor in and to the Units in the United States of America or the Dominion of Canada (other than the Province of Quebec). The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates and may also be lettered, in the case of a sublease by the Lessee, in such manner as may be appropriate for convenience of identification of the subleasehold interest therein.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal or foreign taxes including any Canadian withholding tax (other than any United States federal income tax payable by the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes based on such receipts which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the

payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Documentation, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of the ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, materially adversely affect the title, property or rights of the Lessor hereunder or the Vendor under the Security Documentation. The Lessee agrees to give the Lessor notice of such contest within 30 days after institution thereof. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor; provided, however, that the Lessee shall not be obligated to reimburse the Lessor for any imposition so paid unless the Lessor shall have given the Lessee 30 days written notice prior to payment and shall have given the Lessee the opportunity to contest such imposition, provided that any such contest shall be in good faith and by appropriate legal proceedings and the nonpayment of such imposition shall not, in the opinion of the Lessor or the Vendor, materially adversely affect the property or rights of the Lessor or the Vendor under this Lease or the Security Documentation.

In the event that any Canadian withholding tax is imposed upon the interest paid upon the Conditional Sale Indebtedness, the Lessee shall pay to the Lessor the amount of such tax.

In the event that the Lessor shall become obligated

to make any payment to the Builder or the Vendor or otherwise pursuant to any correlative provision of the Security Documentation not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interest of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor; provided, however, that the Lessor shall provide such information and assistance as may be appropriate in the circumstances.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Lessor hereby authorizes the Lessee to act in its own name and on its behalf; provided, however, that the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action or failure to act by the Lessee pursuant to this authorization.

The Lessee shall, whenever requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

§ 7. Maintenance; Casualty Occurrences; Insurance. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good operating order, repair and condition.

In the event that (i) any Unit at any time during the term of this lease shall be or become worn out, lost, stolen, destroyed, or, in the reasonable opinion of the Lessee irreparably damaged, from any cause whatsoever; or (ii) as a result of a change subsequent to July 15, 1984, in any law or rules referred to in the second paragraph of § 9 hereof, it would be economically impractical in the reasonable opinion of the Lessee to conform thereto with respect to the Units, prior to the return of such Unit in the manner set forth in § 14 hereof, such Units shall be deemed to have suffered a Casualty Occurrence and the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. In the event that any unit shall be taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 180 consecutive days, such unit shall be deemed to have suffered a Casualty Occurrence on the one hundred and eightieth day of said period provided that either the Lessee or the Lessor shall have given written notice within 30 days following said one hundred and eightieth day to the other and to the Investor that it deems such unit to have suffered a Casualty Occurrence. On the July 15 next succeeding a Casualty Occurrence or in the event that the notice contemplated by the next preceding sentence is not given prior to July 15 in the calendar year in which such notice is given, then on the July 15 next succeeding the date on which such notice is given, the Lessee shall pay to the Lessor a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below which sum includes and is in lieu of the rental payment or payments in respect of such Unit which would otherwise be due and payable on such date. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis; provided, however, it is understood and agreed that neither the Lessee nor any person controlling, controlled by or under common control with it may purchase any Units suffering a Casualty Occurrence pursuant to clause (ii) above. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall be entitled to receive from the Lessor one half of any balance of such proceeds in the event that such receipt shall be permitted

(a) under the ruling policies of the Internal Revenue Service if a ruling is requested by the Lessor or (b) without such receipt resulting in the Lessee having to pay additional rental under Section 16 hereof on the basis of treatment established by (i) any private ruling letter issued to the Lessee by the Internal Revenue Service that has not been revoked or otherwise rendered inapplicable at the time of such receipt by the Lessee; (ii) any provision of the Code (as defined in Section 16(a) hereof) or the applicable regulations thereunder; or (iii) any published revenue ruling of the Internal Revenue Service which has not been held invalid.

Subject to adjustment pursuant to the provisions of § 16 hereof, the Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite such date:

<u>Date</u>	<u>Percentage of Purchase Price</u>
July 15, 1976	95.3398
July 15, 1977	89.0965
July 15, 1978	90.4161
July 15, 1979	90.6763
July 15, 1980	89.9444
July 15, 1981	88.2865
July 15, 1982	85.7818
July 15, 1983	82.5243
July 15, 1984	78.6253
July 15, 1985	74.2099
July 15, 1986	69.3819
July 15, 1987	64.1894
July 15, 1988	58.6768
July 15, 1989	52.8872
July 15, 1990	46.8418
July 15, 1991	40.5369
July 15, 1992	33.9641
July 15, 1993	27.1151
July 15, 1994, and thereafter	20.0000

The foregoing percentages have been computed without regard to recapture of the Investment Credit (as defined in § 16 hereof). Consequently, the Casualty Value of any Unit suffering a Casualty Occurrence on or before the third, fifth or seventh anniversary of the date of delivery and

acceptance of such Unit shall be increased by the applicable percentage of the Purchase Price set forth below:

<u>Anniversary of Delivery and Acceptance</u>	<u>Percentage of Purchase Price</u>
Third	19.2308
Fifth	12.8205
Seventh	6.4103

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and promptly pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 20% of the Purchase Price of such Unit.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of the Equipment to the Lessor, at its own expense, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies in respect of similar equipment and, in any event, comparable in amounts and against risks insured against by the Lessee in respect of similar equipment owned by it; provided, however, that the Lessee shall not at any time be required to maintain property insurance with respect to any Unit in an amount greater than the Casualty Value from time to time applicable to such Unit. The benefits thereof shall be payable to the Vendor, the Lessor and the Lessee, as their interests may appear, so long as the indebtedness, if any, evidenced by the Security Documentation shall not have been paid in full, and thereafter to the Lessor and the Lessee as their interests may appear. If the Lessor shall receive any net insurance proceeds as the result of insurance carried by the Lessee or any condemnation or other

similar payments in respect of Units suffering a Casualty Occurrence (including, without limitation, any payments made by the handling railroad or any other third party which may be required to pay all or a portion of any loss arising from such Casualty Occurrence), the Lessor shall, subject to the Lessee having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation or other similar payments to the Lessee up to an amount equal to the Casualty Value with respect to such Units paid by the Lessee and any balance of such proceeds or condemnation or other similar payments shall remain the property of the Lessor; provided, however, that the Lessee shall be entitled to receive from the Lessor one half of any balance of such proceeds or condemnation or other similar payments in the event that such receipt shall be permitted (a) under the ruling policies of the Internal Revenue Service if a ruling is requested by the Lessor or (b) without such receipt resulting in the Lessee having to pay additional rental under § 16 hereof on the basis of treatment established by (i) any private ruling letter issued to the Lessee by the Internal Revenue Service that has not been revoked or otherwise rendered inapplicable at the time of such receipt by the Lessee (ii) any provision of the Code (as defined in § 16(a) hereof) or the applicable regulations thereunder; or (iii) any published revenue ruling of the Internal Revenue Service which has not been held invalid by a court having ultimate appellate jurisdiction over the Federal income tax liability of the Lessee. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which proceeds were paid has been fully repaired.

§ 8. Reports. On or before January 15 in each year, commencing with the calendar year 1977, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding October 30 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documentation, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding twelve months (or since the date of this Lease in the case of the first such statement) and such information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings

required by § 5 hereof and by the Security Documentation have been preserved or replaced and (c) stating that the Lessee has complied in all material respects with the requirements of the first paragraph of § 7. The Lessor and the Vendor shall have the right, by their respective agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

The Lessee will furnish to the Lessor, the Vendor, and the Investor (i) within 120 days after the close of the fiscal year of the Lessee, a certificate of the Lessee, signed by a principal financial officer, to the effect that the signer has reviewed the relevant terms of this Lease, the Participation Agreement and the Security Documentation and has made, or caused to be made under his supervision, a review of the transactions and condition of the Lessee during the preceding fiscal year, and that such review has not disclosed the existence during such period, nor does the signer have knowledge of the existence, as at the date of such certificate, of any condition or event which constitutes a default, an Event of Default or event of default or which, after notice or lapse of time or both, would constitute such a default, an Event of Default or event of default or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action the Lessee has taken or is taking or proposes to take with respect thereto, (ii) as soon as practicable after the filing of the same, all quarterly and annual reports of the Lessee required to be filed under the Securities Exchange Act of 1934, and (iii) from time to time such other information as the Lessor may reasonably request. The Lessee will furnish the Lessor from time to time on request such information as the Lessee or the Lessor may be required to furnish to any person pursuant to the Security Documentation.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks,

as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A of the Security Documentation; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation, or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does

not, in the opinion of the Lessor or the Vendor, materially adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documentation. The Lessee, at its own cost and expense, may furnish additions, modifications and improvements to the Units during the term of this Lease provided that such additions, modifications and improvements are readily removable, without causing material damage to the Units. The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee and the Lessor may require the Lessee to remove such additions, modifications or improvements from the Units at the end of original term or if the original term is extended, at the end of such extended term.

Except as otherwise provided in the next preceding paragraph, any and all additions to any Unit and any and all parts installed on and additions and replacements made to any Unit shall constitute accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Security Documentation) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, including without limitation strict or absolute liability in tort or by statute imposed and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default by the Lessee under the Participation Agreement or an event of default or an Event of Default under the Security Documentation or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease, or the transfer of title to the Equipment by the Vendor pursuant to any provision of the Security Documentation. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations

under this Lease or the expiration or termination of the term of this Lease.

The Lessee further agrees to indemnify, protect and hold harmless the Vendor and the Builder as third party beneficiaries hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor or the Builder because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee or Procor Limited and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee or Procor Limited and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to the Builder of any claim known to the Lessee from which liability may be charged against the Builder hereunder.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an Event of Default) shall occur:

A. default shall be made in payment of any amount provided for in § 3, 7 or 13 hereof, and such default shall continue for ten days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements contained herein, in the Consent (as defined in the Participation Agreement) or in the Participation

Agreement by the Lessee, and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied; or

D. any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Consent, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Consent), and unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and under the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(i) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after-tax losses of Federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(ii) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided;

and thereupon the Lessor, subject to the applicable provisions of law, may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purpose whatever and without any duty to account to the Lessee with respect to such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify in such notice of termination: (x) a sum equal to (A) the excess, if any, of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Units which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Units over the then present value of the rental which the Lessor reasonably estimates to be obtainable for such Units during such period, such present value to be computed in each case on the basis of a 5.93% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, plus (B) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of all amounts payable by the Lessee to the Lessor hereunder, under the laws of any Federal, state or local government or taxing authority of the United States of America or under the laws of any taxing authority or governmental subdivision of a foreign country, shall, in the reasonable opinion of the Lessor, be equal to all or such portion of the Investment Credit (as defined in § 16 hereof) lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a direct or indirect result of the breach of one or more of the representations, war-

warranties and covenants made by the Lessee in § 16 or any other provision of this Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default, plus such sum as shall, in the reasonable opinion of the Lessor, cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if the Lessor had been entitled to utilization of all or such portion of the ADR Deduction and the Interest Deduction (as such deductions are defined in § 16 hereof) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of the Units as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 16 or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessee or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default plus such sum as will pay or reimburse the Lessor for any interest, penalties or additions to tax incurred in connection with such loss, failure to claim, inability to claim, disallowance or recapture; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this subparagraph (ii) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination, over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys'

fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. Return of Units upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or any other user thereof to return the Unit or Units) place such Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for

insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

All amounts earned in respect of the Units after the date of termination of this Lease, whether by reason of the exercise of a remedy upon an Event of Default or otherwise, shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, or any Unit is not delivered to the Lessor within 60 days of such termination as provided in § 14, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which the per diem interchange rate for such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease

shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 9, 10 and 16 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns.

So long as the Lessee shall not be in default under this Lease and no event of default exists under the Security Documentation, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease but, without the prior written consent of the Lessor and the Vendor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, charge, security interest or other encumbrance which arises; provided, however, that the Lessee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Lessor or the Vendor, materially adversely affect the property or rights of the Lessor or the Vendor under this Lease or the Security Documentation. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease and no event of default exists under the Security Documentation, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate and the Lessee may also (a) furnish the Units or any thereof to railroad companies for use upon the lines of railroad owned or operated by them or over which they have trackage rights and upon connecting and other carriers in the usual interchange of traffic, or to others than railroad companies.

for use in their business, or (b) sublet all or any of the Units, but only, in either case, upon and subject to all the terms and conditions of this Lease, and to all rights and remedies of the Vendor under the Security Documentation; provided, however, that the Lessee shall not use or permit the use of any Units in service involving the regular operation and maintenance thereof outside the United States of America or the Dominion of Canada. The Lessee may receive and retain compensation for such use from others so using any of the Units. The Lessee represents and warrants to the Lessor and the Vendor that the Units will be used, and are intended for use, in connection with interstate commerce.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

§ 13. Renewal Option; Right of First Refusal.

The Lessor intends to retain the Units for release at the expiration of the term of this Lease. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease elect to extend the term of this Lease in respect of all, but not fewer than all, of the Units then covered by this Lease for one additional two-year period commencing on the scheduled expiration of the original term of this Lease, at an annual rental equal to 50% of the annual rental payable with respect to such Units pursuant to § 3 of the Lease, payable in arrears in two semiannual payments on January 15 and July 15 in each year of the extended term. During and at the termination of such extended term the Lessee shall not be required to comply with the provisions of the second paragraph of § 9 hereof or clause (ii) of § 14 hereof, and the term Casualty Occurrence with respect to any Unit shall not include any event arising

from it being economically impractical for the Lessee to conform to any change of law or rules referred to in said paragraph.

The Lessor agrees that (provided no default hereunder shall have occurred and be continuing) it will not sell the Units, or any of them, unless the Lessor shall have given the Lessee at least 30 business days' prior written notice of such sale, specifying the sale price and terms of such sale, and the Lessee shall have had the opportunity to purchase such Unit or Units at the same price and on the same terms as specified in such notice. Such opportunity of the Lessee shall continue for a period of 20 business days, commencing on the date it receives such notice from the Lessor. Upon payment of the purchase price of any Unit, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for each Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Builder, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

§ 14. Return of Units upon Expiration of Term.

As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee or any of its affiliates as the Lessor may reasonably designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period ending the later of (a) 30 days following the delivery of such Unit to the Lessor or (b) 30 days following the delivery to the Lessor of substantially all of the Units required to be delivered pursuant to this Section 14 ("substantially all" meaning for this purpose not less than 90% of such Units) and transport the same at any time within such period to any carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee; provided, however, that the expense of transporting such Units to be paid by the Lessee shall not be in excess of the expense of transporting such Units from their location at the expiration of the Lease to Chicago, Illinois. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative

or representatives of any prospective purchaser of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, on behalf of either the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, and (ii), except as provided in § 13 hereof, meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the Security Documentation and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and, at such time as any of the Units may be located in any Province of the Dominion of Canada (other than Quebec), to be filed and recorded in each such Province wherein such filing and recording is necessary for the purpose of proper protection, to the satisfaction of the Lessor and the Vendor, of the Vendor's and Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documentation and the assignment hereof and thereof to the Vendor. The Lessee will undertake the filing, registering, deposit and recording required of the Lessor under the Security Documentation and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documentation and the

assignment hereof and thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. Notwithstanding the foregoing, the Lessee shall not be required to take any such action (i) in the Province of Quebec or (ii) (other than filing and recording under Section 20c of the Interstate Commerce Act) so long as (a) no Units are removed from the United States to any place other than the Province of Quebec or (b) if, after giving effect to the failure to take such action, all action required by law (other than actions required in the Province of Quebec) has been taken so as to protect the Vendor's and the Lessor's respective interests in Units having a Purchase Price of not less than 90% of the aggregate Purchase Price of all the then existing Units. This Lease and the Security Documentation shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 16. (a) Federal Income Taxes. It is the intent of the parties to this Lease that it will be a true lease for all Federal, state, city and local income taxes or for franchise taxes measured by net income, and that this Lease does not convey to the Lessee any right, title or interest in the Units except as lessee and that, for United States income tax purposes (and to the extent applicable for state and local tax purposes), the Lessor shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property used in such owner's trade or business, including, without limitation, (i) the maximum depreciation deduction with respect to the Units authorized under Sections 167 and 804(c)(3) of the Code based on the aggregate Purchase Price of the Units utilizing the 12-year depreciable life prescribed for the Units in the Asset Guideline Class No. 00.25, as described in Revenue Procedure 72-10, I.R.B. 1972-8, in accordance with Section 167(m) of the Code, employing the double declining method of depreciation switching to the sum-of-the-years digits method when most beneficial to the Lessor, utilizing the modified half-year convention as provided in Reg. 1.167(a)-11(c)(2)(ii) and taking into account an estimated gross salvage value of 10% of the Purchase Price of the Units which will be reduced by 10% of the Purchase Price as provided in Section 167(f) of the Code (such deduction being

herein called the ADR Deduction), (ii) deductions with respect to interest payable under the Security Documentation pursuant to Sections 163, 805(e)(1) and 809(d)(12) of the Code (such deductions being herein called the Interest Deduction), and (iii) the 10% investment credit in 1976 (herein called the Investment Credit) with respect to the Purchase Price of the Units pursuant to Section 38 and related sections of the Code for "new section 38 property".

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing or which would increase the amount of rentals required to be taken into income by the Lessor over the amount specified to be payable under this Lease on the dates due hereunder and that each of such corporations will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. The Lessee agrees to keep and make available for inspection and copying by the Lessor such records as will enable the Lessor to determine the extent to which it is entitled to the benefit of the Investment Credit, the ADR Deduction and the Interest Deduction with respect to the Units.

The Lessee represents and warrants that (A) all the Units constitute property the full Purchase Price of which qualifies for the Investment Credit under Section 50 of the Code; (B) at the time the Lessor becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of Section 48(b) of the Code and at the time the Lessor becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Section 48(b) and 167(c)(2) of the Code from commencing with the Lessor; (C) at all times during the term of this Lease, each Unit will constitute "section 38 property" within the meaning of Section 48(a) of the Code, and the Lessee will not at any time during the term of this Lease use or fail to use any Unit in such a way as to disqualify it as "section 38 property", including use of the Units predominantly outside the United States, within the meaning of Section 48(a) of the Code; (D) the Lessee will maintain sufficient records to verify such use; (E) upon request of the Lessor, the Lessee will provide written reports establishing such use; (F) the residual value of the

Equipment at the expiration of the original term of the Lease and any renewal pursuant to Section 13 of the Lease will be at least 20% of the original cost of the Equipment (after subtracting from such value any cost to the Lessor for delivery of possession of the Equipment to the Lessor at the end of the original or extended term of the Lease and without including in such value any increase or decrease for inflation or deflation during the original or extended term); (G) the remaining useful life of the Equipment at the end of the original term and any extended term will be at least five years.

With respect to any Unit, if (i) for any reason (other than the reasons set forth below) prior to the receipt by the Lessor of a favorable ruling (herein called the Ruling) from the Internal Revenue Service to the effect that the Lessor is the owner of the Units and has the right to claim the Investment Credit, the ADR Deduction (without regard for the applicable gross salvage value), and the Interest Deduction, or (ii) after the receipt by the Lessor of the Ruling as a direct or indirect result of the inaccuracy in law or in fact of the representations and warranties set forth in the preceding paragraph or any act or omission of the Lessee (including, but not limited to, the failure of the Lessee to furnish the notices to the lessor contemplated by the last paragraph of subsection (b) of this § 16 or any inaccuracy in such notice) or the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee in connection with the application for the Ruling, the Lessor shall lose or shall not have or shall lose the right to claim, or there shall be disallowed or recaptured with respect to the Lessor, all or any portion of the Investment Credit, the Interest Deduction or the ADR Deduction with respect to a Unit in computing taxable income under one of the accelerated methods of depreciation provided in Section 167(b) of the Code for the period this Lease is in effect, then, after written notice thereof to the Lessee by the Lessor, the rental rates applicable to such Unit set forth in § 3 hereof shall be increased by an amount for such Unit which, in the reasonable opinion of the Lessor, will cause the Lessor's net after tax return in respect of such Unit under this Lease (calculated on the same basis as used by the Lessor in originally evaluating this transaction) to equal the net after tax return that would have been available if the Lessor had been entitled to utilization of all or such portion of the Investment Credit, Interest Deduction or ADR Deduction which was not claimed or was disallowed or recap-

tured and the Lessee shall forthwith pay to the Lessor as additional rental the amount of any interest or penalty which may be assessed by the United States against the Lessor attributable to the loss of all or any portion of the Investment Credit, the Interest Deduction or ADR Deduction, provided, however, that such rental rate shall not be so increased nor shall the Lessee be obliged to the Lessor for such interest or penalty if the Lessor shall have lost, or shall not have or shall have lost the right to claim, or if there shall have been disallowed with respect to the Lessor all or any portion of the Investment Credit, the Interest Deduction or the ADR Deduction with respect to such Unit as a direct result of the occurrence of any of the following events:

(A) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated pursuant to § 7 hereof;

(B) a voluntary transfer by the Lessor of legal title to such Unit, the disposition by the Lessor of any interest in such Unit or the reduction by the Lessor of its interest in the rentals from such Unit under the Lease (other than as contemplated by the Security Documentation) unless, in each case, an Event of Default shall have occurred and be continuing;

(C) the amendment of the Security Documentation without the prior written consent of the Lessee, if such amendment shall be the cause of such loss;

(D) the failure of the Lessor to claim the Investment Credit, the ADR Deduction or the Interest Deduction in its income tax return for the appropriate year or the failure of the Lessor to follow proper procedure in claiming the Investment Credit, the ADR Deduction or the Interest Deduction with respect to such Unit; or

(E) the failure of the Lessor to have sufficient liability for the tax against which to credit such Investment Credit or income to benefit from the ADR Deduction or the Interest Deduction, as applicable.

The Lessor agrees that if, in the opinion of its or the Lessee's independent tax counsel (herein referred to as Counsel), a bona fide claim to all or a portion of the ADR Deduction, the Investment Credit or the Interest Deduction on any Unit exists in respect of which the Lessee would other-

wise be required to pay to the Lessor pursuant to the immediately preceding paragraph increased rental and additional rental in respect of any interest and/or penalty, the Lessor shall upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by either Counsel in order to sustain such claim; provided, however, that the Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein in a form satisfactory to the Lessor. The Lessor may, at its option, take such action prior to making payment of any tax and interest and/or penalty attributable to the disallowance or recapture with respect to the Lessor of all or any portion of the Investment Credit, the Interest Deduction or the ADR Deduction on any Unit (hereinafter called a Tax Payment) or may make such Tax Payment and then sue for a refund. If the Lessor takes such action prior to making such Tax Payment, such increased rental and additional rental need not be paid by the Lessee while such action is pending. In such case, if the final determination shall be adverse to the Lessor, the increased rental shall be computed by the Lessor as of the date of such final determination and the Lessee shall commence payment thereof on the rental payment date next succeeding such final determination and, on or before such rental payment date, the Lessee shall pay to the Lessor as additional rental an amount equal to all interest and penalty paid by the Lessor in respect of such final determination, together (if the Lessee, at its option, shall not have paid such interest and penalty to the Lessor on the date such payment is made by the Lessor) with interest thereon from the date such payment is made by the Lessor to the date the Lessee reimburses the Lessor therefor at the highest prime rate charged by any of the four New York City banks having the largest total assets in effect on the date of such final determination (hereinafter called the Prime Rate). If the Lessor makes such Tax Payment and then sues for a refund, such increased rental shall commence to be payable by the Lessee on the first rental payment date after such Tax Payment is made and, on or before such rental payment date, the Lessee shall pay to the Lessor as additional rental any amount equal to all interest and penalty paid by the Lessor included in such Tax Payment. In such case, if the final determination shall be in favor of the Lessor, the rental payable by the Lessee to the Lessor shall be reduced to the rental rate that would have been in effect if such increase had not been made (or such reduction shall be made propor-

tionately if the final determination is partly in favor of and partly adverse to the Lessor) and such reduced rental shall be payable by the Lessee on the rental payment date next succeeding such final determination and thereafter. In addition, the Lessee and the Lessor shall adjust their accounts so that (i) the Lessor pays to the Lessee (A) an amount equal to the increase in rentals received by the Lessor theretofore paid by the Lessee to the Lessor (or a proportionate part thereof if the final determination is partly in favor of and partly adverse to the Lessor) on or before such next succeeding rental payment date together with interest thereon at the Prime Rate for the period such increase in rentals received by the Lessor was paid to the Lessor to the date the Lessor pays to the Lessee an amount equal to such increase and (B) the amount of any penalty or interest refunded to the Lessor as a result of such final determination and any interest paid to the Lessor by the government on such refund, promptly upon receipt thereof and (ii) the Lessee pays to the Lessor an amount equal to interest at the Prime Rate on the amount of the tax refund made in respect of the Tax Payment (excluding any interest or penalty included therein) for the period from the date of the original payment of the Tax Payment by the Lessor to the date such tax refund is received by the Lessor, such Prime Rate to be calculated in either case as from time to time in effect during the respective periods.

In the event that any payment or adjustment is required to be made pursuant to the two immediately preceding paragraphs or subsection (b) of this § 16 and such payment or adjustment is to be made on succeeding rental payment dates or on or before the next succeeding rental payment date, but at such time this Lease shall have been terminated or rent shall otherwise no longer be due and payable on the remaining rental payment dates, (A) the Lessee shall promptly pay the Lessor an amount, if any, otherwise payable and not theretofore paid by it, equal to the incremental increase in rent which would have been required if the earlier of the final determination and the Tax Payment had occurred immediately prior to the last rental payment date on or prior to the termination of this Lease and (B) each party required to make payment shall promptly pay all amounts otherwise payable and not theretofore paid by it in respect of interest and penalty (and interest thereon) and previously reimbursed increments of rent calculated by reference to the actual applicable dates of final determination, Tax Payment and reimbursements pursuant to the immediately preceding paragraph.

(b) Rental Adjustment For Lessee's Capital Expenditures. In the event and to the extent that the cost of any improvement and/or addition (hereinafter called Capital Expenditures) to a Unit made by the Lessee, under and pursuant to the terms of this Lease or otherwise, is required to be included in the gross income of the Lessor for Federal income tax purposes at any time prior to the time such Unit is disposed of in a taxable transaction, then the rentals for the Units set forth in § 3 hereof shall, on the next succeeding rental payment date after the date on which the Lessee is required to furnish written notice thereof to the Lessor pursuant to the last paragraph of this subsection (b) after said inclusion in the Lessor's gross income is required, be increased to such amount or amounts as shall, in the reasonable opinion of the Lessor, after taking into account any present or future tax benefits that the Lessor reasonably anticipates it will derive from its additional investment in the Units by reason of said inclusion (including without limitation any current deductions, future depreciation deductions and investment tax credit), cause the Lessor's net return (calculated on the same basis as used by the Lessor in originally evaluating this transaction) to equal the net return that would have been realized by the Lessor if the cost of such Capital Expenditures had not been includible in the Lessor's gross income.

In determining the present or future tax benefits to be taken into account by the Lessor in establishing the rental increase required hereby, the Lessor shall attempt to maximize such benefits and hence minimize the increase in rents by making such elections (including where advantageous the applicable asset guideline repair allowance and accelerated depreciation, if then permitted) and utilizing such conventions and accounting methods as will further such objectives; provided, however, that the Lessor shall not be required to make any election or utilize a particular convention or accounting method if the Lessor determines, in its sole discretion but in good faith, that in so doing it will adversely affect its Federal income tax liability determined without regard to this transaction.

For purposes of this subsection the cost of Capital Expenditures made by the Lessee shall be deemed to be "required to be included in the gross income of the Lessor for Federal income tax purposes" if such inclusion is required by (i) any private ruling letter issued to the Lessor by the Internal Revenue Service that has not been revoked or otherwise

rendered inapplicable at the time the cost of said Capital Expenditures is incurred; (ii) any provision of the Code or the applicable regulations thereunder; or (iii) any published revenue ruling of the Internal Revenue Service which has not been held invalid by a court having ultimate appellate jurisdiction over the Federal income tax liability of the Lessor.

As a condition of any increase in rentals pursuant to this subsection, the Lessor will, upon the written request and at the sole expense of the Lessee (A) seek a modification of any private ruling letter described in (i) of the preceding paragraph to eliminate the requirement that the cost of Capital Expenditures be included in the Lessor's gross income and (B) contest the inclusion of the cost of Capital Expenditures in its gross income if such inclusion is required pursuant to (ii) or (iii) of the preceding paragraph in such forum as it, in its sole judgment but with due regard to the Lessee's advice, shall select; provided, however, that the Lessor shall not be required to contest such inclusion unless it has received an opinion from independent counsel selected by the Lessee and acceptable to the Lessor that there is a reasonable basis for contesting such inclusion and the Lessee has advanced to the Lessor such sums as the Lessor may reasonably deem necessary to pay the costs of such contest.

The Lessee agrees that, within 30 days after the close of any calendar year (or in the event the Lessor gives the Lessee written notice that the Lessor's taxable year closes on a date specified therein other than December 31, within 30 days after said date) in which the Lessee has made Capital Expenditures which are required to be included in the gross income of the Lessor for Federal income tax purposes prior to the time such Unit is disposed of in a taxable transaction, the Lessee will give written notice thereof to the Lessor describing such Capital Expenditures in reasonable detail and specifying the cost thereof with respect to each Unit.

(c) Miscellaneous. For purposes of this § 16, the term "Lessor" shall include any affiliated group, within the meaning of Section 1504 of the Code, of which the Lessor is a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes.

In the event that rental rates shall be adjusted

as hereinabove provided in this § 16, applicable Casualty Values set forth in § 7 hereof shall be appropriately adjusted (but in no event shall they be reduced below the corresponding Casualty Values as defined in the Security Documentation). The Lessee's and the Lessor's agreements to pay any sums which may become payable pursuant to this § 16 shall survive the expiration or other termination of this Lease.

For purposes of this § 16 and clause (ii) of the first paragraph of § 10 hereof, if an amount is to be determined "in the reasonable opinion of the Lessor" and the Lessee disagrees with the Lessor's determination of such amount, then the determination of such amount shall be made by a third party acceptable to both the Lessee and the Lessor; provided, however, that until such third party shall have made a determination, the Lessor's determination shall govern.

§ 17. Interest on Overdue Rentals. Anything to the contrary herein notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 10-1/2% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 18. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid and addressed as follows:

(a) if to the Lessor, at One Tower Square, Hartford, Connecticut 06115, Attention of: Securities Department--Private Placement Division; and

(b) if to the Lessee, at 90 Half Day Road, Lincolnshire, Illinois 60015, Attention of Donald B. Romans;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Agent at 79 South Main Street, Salt Lake City, Utah 84111, Attention of Trust Department, Corporate Division, and to ITEL Leasing Corporation, One Embarcadero Center, San Francisco, California 94111, Attention of Contract Administration.

§ 19. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Except for the Participation Agreement, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

§ 20. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor shall be deemed to be the original counterpart. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 21. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

UNION TANK CAR COMPANY,

by

J. D. Johnson

~~President~~
TREASURER

[Corporate Seal]

Attest:

W. M. Owen

Assistant Secretary

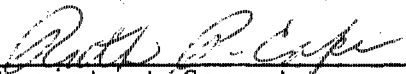
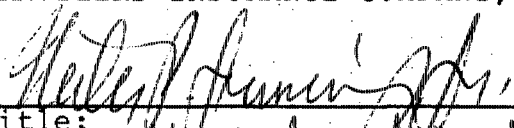
THE TRAVELERS INSURANCE COMPANY,

by

Title:

[Corporate Seal]

Attest:


Assistant Secretary
Vice President

STATE OF ILLINOIS,)
) ss.:
COUNTY OF LAKE,)

On this 3rd day of April 1976, before me personally appeared P. J. Johnson, to me personally known, who, being by me duly sworn, says that he is ~~Vice President~~ of UNION TANK CAR COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Barbara J. Ineed
Notary Public

[Notarial Seal]

My Commission expires

My Commission Expires Feb. 21, 1979

STATE OF CONNECTICUT,)
) ss.:
COUNTY OF HARTFORD,)

On this *6th* day of April 1976, before me personally appeared *R. J. Yarnes Jr.*, to me personally known, who, being by me duly sworn, says that he is *Assistant Officer* of THE TRAVELERS INSURANCE COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said company, that said instrument was signed and sealed on behalf of said company by authority of the Finance Committee of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said company.

Arthur P. Cape

Notary Public

[Notarial Seal]

My Commission expires *3-31-77*

SCHEDULE A TO LEASE

<u>Type and ADR Mechanical Designation</u>	<u>Quantity</u>	<u>Lessee's Road Numbers</u>
52'6" 70-ton single sheath steel box car; AAR Mechanical Designation XM or XP	175	CPAA 207500-207614 and 208000-208059